

of Louisville and the University of Kentucky, legendary coaches and unforgettable players have, for decades, kept fans on the edges of their seats until the final buzzer. For over 140 years, the Kentucky Derby has been known as a mile and a quarter that makes champions and brings the eyes of the world to Louisville.

I am exceptionally proud to represent Kentucky in the U.S. Senate, and I am forever grateful to the people of my home State for giving me the opportunity to do just that. Kentucky has a distinguished history, and I am confident that trailblazers and pioneers from across the Bluegrass State will continue to make it the land of tomorrow. It is my honor to call the Commonwealth my home, and I look forward to celebrating this 225th anniversary next week.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the Thapar nomination, which the clerk will report.

The assistant bill clerk read the nomination of Amul R. Thapar, of Kentucky, to be United States Circuit Judge for the Sixth Circuit.

The ACTING PRESIDENT pro tempore. The Democratic whip.

Mr. DURBIN. Mr. President, I rise in opposition to the nomination of Judge Amul Thapar to serve on the Sixth Circuit Court of Appeals.

Judge Thapar is President Trump's first nominee to serve on a Federal appeals court. Last week, the Senate Judiciary Committee considered this nomination and no Democrat voted for it.

Judge Thapar is on the list of 21 candidates that the Federalist Society and Heritage Foundation have selected for President Donald Trump to choose from when filling Supreme Court vacancies.

Judge Thapar is well known to the Federalist Society. He was a member of that organization prior to becoming a district court judge, and since he became a judge he has spoken at Federalist Society events 17 times.

Some of my colleagues on the Republican side are like Captain Renault in *Casablanca*, who claimed he was

"shocked, shocked" to find out there was gambling going on in Rick's Cafe.

They are shocked that anyone could be concerned about the Federalist Society, which they claim is just a simple debate club. Far from it—consider the following background.

The organization was founded in 1982 by students at two law schools, Yale and the University of Chicago, under the faculty supervision of Robert Bork and Antonin Scalia, who just happen to be the two most prominent conservative legal scholars of their generation.

According to a recent article about the Federalist Society by Jeffrey Toobin: "within just a few years, the group was embraced and funded by a number of powerful, wealthy conservative organizations, which eventually included foundations associated with John Olin, Lynde and Harry Bradley, Richard Scaife, and the Koch Brothers."

The Federalist Society's website includes the group's purpose statement. It claims that the legal profession is: "currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society."

The statement describes the Federalist Society as a group of conservatives and libertarians calling for: "re-ordering priorities within the legal system," to fit their principles. Does that sound like the mission statement of a nonpartisan debate society?

How has the Federalist Society gone about this reordering? It's been largely the work of Mr. Leonard Leo, the longtime executive vice president of the Federalist Society who is currently serving as an advisor to the Trump White House.

Mr. Leo has been credited with being a driving force behind the Supreme Court nominations of Justice Neil Gorsuch, Chief Justice John Roberts and Justice Samuel Alito. That is one-third of the current Supreme Court that he has helped put in place.

Mr. Leo recently gave a speech where he said: "I've seen that comment about the third of the Supreme Court. I prefer controlling interests. But we haven't quite been able to launch a hostile takeover yet."

Mr. Leo went on to advocate for radical change, saying: "I would love to see the courts unrecognizable." He has said of the judicial confirmation process: "it's like war."

In an unprecedented move, President Trump outsourced the selection of Supreme Court candidates to Mr. Leo, the Federalist Society, and the right-wing Heritage Foundation. He publicly thanked these special interest groups for putting together his list of 21 Supreme Court candidates, and Mr. Leo was the first person to call Neil Gorsuch about his nomination.

As Jeffrey Toobin wrote, Leonard Leo: "knew how to play the game—how to find a nominee who met Trump's ideological requirements as well as his own, while observing the proprieties expected for judicial nominees."

Mr. Leo told Mr. Toobin that it was: "easy" to find these nominees because: "when you've been working in this vineyard for twenty-five years you know everybody."

That brings us back to Judge Thapar. Leonard Leo, and the big money right-wing interests that fund the Federalist Society, feel that they know Judge Thapar well enough to include him on the list of 21.

They have had plenty of opportunity to get a sense of his views, as Judge Thapar had been a member of the Federalist Society and has frequently spoken at their events.

At his hearing and in my questions to him, I sought reassurance from Judge Thapar that he would be independent from this right-wing group and President Trump.

His answers did not provide that reassurance.

For example, I asked Judge Thapar whether he agreed or disagreed with the Federalist Society's purpose statement. He ducked the question, saying he didn't know what the Federalist Society meant by the statement.

I asked him if he thought it was appropriate for the President to delegate his Supreme Court selection process to the Federalist Society and Heritage Foundation, since this creates incentive for judges not to contravene the views of those organizations and their big-money donors. He ducked again, saying he would not opine on this because he claimed it was a "political question."

In the aftermath of *Citizens United*, special interest groups pour dark money into campaigns in support of Republican judicial nominees like Judge Thapar. I asked Judge Thapar if he would discourage secret donations in support of his nomination.

After all, if we don't know who is secretly donating in support of his nomination, how will we know when Judge Thapar needs to recuse himself because one of those donors has an interest in a case he is considering?

He dodged that question too, saying he wasn't aware of any donations about his nomination. Of course, he wouldn't be aware of secret donations—that's the problem.

I also asked him about the original understanding of the Constitution's Emoluments Clause. He said he could not discuss it because there is pending litigation on the matter.

That is curious, because I thought the Federalist Society's view was that the original meaning of constitutional provisions was immutable and unchanging. If the meaning of the Constitution doesn't change, why do Federalist Society nominees decline to tell us this meaning when there is litigation underway affecting President Trump?

I asked Judge Thapar about his decision in *Winter v. Wolnitzek*. This was a major campaign finance decision in which he applied strict scrutiny to invalidate a ban on judges making political contributions. A unanimous Sixth Circuit panel reversed his ruling.